Supr
05-981 FEB 3 - 2006
No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

NAVY FEDERAL CREDIT UNION, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether under Title VII of the Civil Rights Act of 1964, a Fair Employment Practice Agency's nearly four year delay in investigating and prosecuting a charge of discrimination can be imputed to the Equal Employment Opportunity Commission ("EEOC") for purposes of a laches defense in an action brought by the EEOC six years after the filing of the original charge.

PARTIES TO THE PROCEEDING

RULE 29.6

Pursuant to Supreme Court Rule 29.6, Navy Federal Credit Union states that it does not have any parent corporations nor are there any publicly held companies that own 10% or more of its stock.

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The published opinion of the United States Court of Appeals for the Fourth Circuit in *Equal Employment Opportunity Commission v. Navy Federal Credit Union*, Case No. 04-2058, 424 F.3d 397, filed September 13, 2005, vacating the judgment of the District Court in favor of Petitioner, is reproduced in the Appendix hereto. (Pet. App. 1a-28a).

The unpublished memorandum order of the United States District Court for the Eastern District of Virginia (Alexandria Division) in *Equal Employment Opportunity Commission v. Navy Federal Credit Union*, Case No. 03-543-A, filed June 18, 2004, granting Petitioner's motion for summary judgment, is reproduced in the Appendix hereto. (Pet. App. 29a-40a).

The unpublished order of the United States Court of Appeals for the Fourth Circuit in *Equal Employment Opportunity Commission v. Navy Federal Credit Union*, Case No. 04-2058, filed November 8, 2005, denying Petitioner's petition for rehearing and petition for rehearing en banc, is reproduced in the Appendix hereto. (Pet. App. 41a).

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on September 13, 2005. Petitioner timely filed a petition for rehearing and rehearing en banc on October 7, 2005, which was denied by the Court of Appeals on November 8, 2005. (Pet. App. 41a).

This petition for writ of certiorari is filed within 90 days of the date of the Court of Appeals' denial of the Petitioner's petition for rehearing and rehearing en banc pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rule 13.3. This Court has jurisdiction to review on a writ of certiorari the Court of Appeals' judgment pursuant to 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS INVOLVED

The pertinent text of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-4(g)(1), -5(c) and (e)(1), and -8(b), along with the EEOC's regulations that are at issue here, 29 C.F.R. §§ 1601.13(a)(3)(i)-(ii) and (c), .70(a), .74(a), .75(a), and .80, are set out in the Appendix to this Petition pursuant to Supreme Court Rule 14.1(f) because the statutory and regulatory provisions involved are lengthy. (Pet. App. 42a-54a).

STATEMENT

Petitioner seeks review of the ruling of the United States Court of Appeals for the Fourth Circuit which held that a nearly four year delay attributable to the Fairfax County Human Rights Commission ("FCHRC") was not imputable to the Equal Employment Opportunity Commission ("EEOC") for purposes of laches. (Pet. App. 20a-23a).

Petitioner seeks review of the Fourth Circuit's ruling because the EEOC regularly "partners" with fair employment practice agencies ("FEPAs") such as the FCHRC by handing off its work to them, and justice dictates that if the FEPA is dilatory to the point of justifying a laches defense, so too is the EEOC in a

subsequent litigation. A different result certifies that the EEOC can subcontract its duties to the most negligent of agencies and thereafter, prosecute a severely handicapped defendant.

The petition arises out of a March 25, 1997 administrative charge of discrimination filed with the FCHRC by an employee of Navy Federal Credit Union ("Navy Federal"), Tammy Simms, alleging that her former supervisors, including Donna Santos, discriminated against her. (Pet. App. 10a; C.A. J.A. 240).[1] The charge was sent to the EEOC for cross-filing two days later (Pet. App. 10a), with notice provided by the EEOC to Navy Federal on March 31, 1997 (C.A. J.A. 241). The FCHRC took the lead during investigation. (Pet. App. 10a-11a).

Navy Federal responded to Ms. Simms' charge on May 15, 1997. (Pet. App. 10a). Four months later, the FCHRC requested additional information, which was provided on September 16, 1997. (C.A. J.A. 242). Two weeks later, the FCHRC conducted an interview of one of Ms. Simms' supervisors. (C.A. J.A. 266). Eighteen months passed before the FCHRC, on March 11, 1999, again contacted Navy Federal. (C.A. J.A. 252). Navy Federal provided two more employees for interview. (C.A. J.A. 249-50). Almost two years later, on February 6, 2001—and after almost four years in total—the FCHRC issued a cause finding of retaliation and a no-cause finding of discrimination on the Simms

[1] "Pet. App." refers to Petitioner's Appendix attached hereto; whereas, "C.A. J.A." refers to the Joint Appendix filed by the parties in the Court of Appeals.

charge. (Pet. App. 11a).

On March 1, 2001, the FCHRC wrote the EEOC, explaining that it had lost jurisdiction over Ms. Simms' charge two years earlier, on March 24, 1999. (Pet. App. 11a). The EEOC took up the matter, but did not issue its determination of retaliation against Ms. Simms until July 6, 2001. (Pet. App. 11a). In that determination, the EEOC also found that an unnamed supervisor of Ms. Simms had been subjected to retaliation as well. (Pet. App. 11a). On October 2, 2001, the EEOC for the first time identified Ms. Santos by name as that supervisor. (C.A. J.A. 302-03). The EEOC and Navy Federal attempted but failed to conciliate the Santos matter, with the last of the settlement negotiations occurring between September and November 2002. (Pet. App. 11a).

On April 28, 2003, over six years after Ms. Simms filed her charge and two years after the FCHRC issued its determination, the EEOC filed suit in the United States District Court for the Eastern District of Virginia (Alexandria Division) for retaliation pursuant to § 704(a) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-3(a)—on behalf of Ms. Santos. (Pet. App. 11a). The District Court had subject matter jurisdiction over the EEOC's Title VII claim pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4).

During litigation, Navy Federal learned the reasons for the extraordinary delay. In deposition, the Executive Director of the FCHRC explained that the investigator assigned to the Simms charge was